

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 7: The Republican Era – Foundations/Sources/Principles

Herbert Spencer, *Social Statics* (1851)¹

Herbert Spencer (1820–1903) was an English philosopher and writer. He was particularly interested in applying Charles Darwin's theory of evolution to politics, economics, and ethics. He insisted the principles underlying the evolution of plants and animals could be applied to human beings. In Spencer's view, human beings could evolve only if government largely left people free to exercise their faculties. Spencer coined the expression, "survival of the fittest." The most prominent English Social Darwinist of the Victorian Era, Spencer's works were also very popular in the United States among proponents of laissez-faire.

Justice Oliver Wendell Holmes famously declared in his dissent in *Lochner v. New York* (1905), "The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics." The following excerpt is from the summary Spencer wrote of *Social Statics*. To what extent do you believe the Fourteenth Amendment or Constitution as a whole enacts that work? To what extent do you believe American conservatives at the turn of the century believed the Constitution enacted Social Statics? In particular, compare the cases in which conservatives tolerate and do not tolerate regulation. Were they libertarians, Social Darwinists, or something else?

By bringing within narrow compass the evidences that have been adduced in support of the Theory of Equity now before him, the reader will be aided in coming to a final judgment upon it.

At the head of these evidences stands the fact that, from whatever side we commence the investigation, our paths alike converge towards the principle of which this theory is a development. If we start with an *a priori* inquiry into the conditions under which alone the Divine Idea – greatest happiness – can be realized, we find that conformity to the law of equal freedom is the first of them. . . . If, turning to man's constitution, we consider the means provided for achieving greatest happiness, we quickly reason our way back to this same condition; seeing that these means cannot work out their end, unless the law of equal freedom is submitted to. . . . If, pursuing the analysis a step further, we examine how subordination to the law of equal freedom is secured, we discover certain faculties by which that law is responded to. . . . If, again, we contemplate the phenomena of civilization, we perceive that the process of adaptation under which they may be generalized, can never cease until men have become instinctively obedient to this same law of equal freedom. . . . To all which positive proofs may also be added the negative one, that to deny this law of equal freedom is to assert divers absurdities. . . .

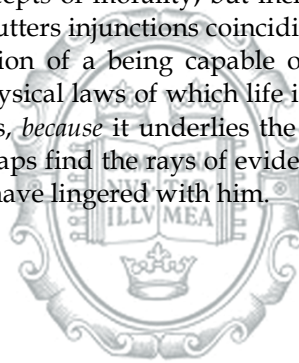
Again, the injunctions of the moral law, as now interpreted, coincide with and anticipate those of political economy. Political economy teaches that restrictions upon commerce are detrimental: the moral law denounces them as wrong. . . . Political economy tells us that loss is entailed by a forced trade with colonies: the moral law will not permit such a trade to be established. . . . Political economy says it is good that speculators should be allowed to operate on the food-markets as they see well: the law of equal freedom (contrary to the current notion) holds them justified in doing this, and condemns all interference with them as inequitable. Penalties upon usury are proved by political economy to be injurious: by the law of equal freedom they are prohibited as involving an infringement of rights. According to political economy, machinery is beneficial to the people, rather than hurtful to them: in unison with this the law of

¹ Herbert Spencer, *Social Statics* (London: John Chapman, 1851).

equal freedom forbids all attempts to restrict its use. One of the settled conclusions of political economy is, that wages and prices cannot be artificially regulated: meanwhile it is an obvious inference from the law of equal freedom that no artificial regulation of them is morally permissible. We are taught by political economy that to be least injurious taxation must be direct: coincidentally we find that direct taxation is the only kind of taxation against which the law of equal freedom does not unconditionally protest. On sundry other questions, such as the hurtfulness of tamperings with currency, the futility of endeavours to permanently benefit one occupation at the expense of others, the impropriety of legislative interference with manufacturing processes, &c., the conclusions of political economy are similarly at one with the dictates of this law. And thus the laboured arguments of Adam Smith and his successors are forestalled, and for *practical* purposes made needless, by the simplest deductions of fundamental morality: a fact which, perhaps, will not be duly realized until it is seen that the inferences of political economy are true, only because they are discoveries by a roundabout process of what the moral law commands.

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Having now briefly reviewed the arguments—having called to mind that our first principle is arrived at by several independent methods of inquiry—that it unfolds into a system, uniting in one consistent whole, theories, some of which seem conflicting, and others unrelated—that it not only gives a scientific derivation to the leading precepts of morality, but includes them along with the laws of state-duty under one generalization—that it utters injunctions coinciding with those of political economy—that civilization is explicable as the evolution of a being capable of conforming to it—that, as the law of complete life, it is linked with those physical laws of which life is the highest product—and lastly, that it possesses such multiplied relationships, *because* it underlies the manifestations of life—having called to mind these things, the reader will perhaps find the rays of evidence thus brought to a focus, sufficient to dissipate the doubts that may hitherto have lingered with him.



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